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January 11, 1939

Hon. J.E. Robinson
County Attorney, Kent County
Jayton, Texas

Dear Mr. Robinson:

Opinion No. 0-41
Re: Collection of delinquent
taxes due a county. Amount
of fees County Attorney
may collect for filing de-
linquent tax suits.

Your letter of January 3 addressed to the
Attorney General has been referred to the writer for reply.

You requested to be advised on the follow-
ing questions:

1. What amount of fees may the County
Attorney receive in a delinquent tax suit?
2. Can the County Attorney waive the notice
to him from the Commissioners' Court to file the delinquent
tax suits?
3. Since a town or village cannot make a
contract with anyone and pay them a per cent of the delinquent
taxes collected, and the County Attorney when notified to file
the suit, answers that he cannot do it for the pay allowed by
law, then what is the best way out when they have a large
amount of delinquent taxes due and unpaid?

In reply to your first question, you are re-
spectfully advised that the Legislature has the sole power to
provide for collection of delinquent taxes and to fix compen-
sation for collection, and the Commissioners' Courts derive

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their power to contract for the collection exclusively from the Statutes. See *White v. McGill*, 114 S. W.(2d) 860 and *Easte - wood v. Henderson County*, 62 S. W. (2d) 65.

Along with other duties the County Attorney is given the duty of collecting delinquent taxes. Article 7332 Revised Civil Statutes states that the County Attorney's compensation shall be \$2.00 for the first tract and \$1.00 for each additional tract up to four, but said fee in no case to exceed \$5.00. Article 7335-A further provides:

"No contract shall be made or entered into by the Commissioners' Court in connection with the collection of delinquent taxes where the compensation under such contract is more than fifteen per cent of the amount collected. Said contract must be approved by both the Comptroller and the Attorney General of the State of Texas, both as to substance and form. Provided however the County or District Attorney shall not receive any compensation for any services he may render in connection with the performance of the contract or the taxes thereunder."

Therefore, it is our opinion that the County Attorney can receive only the fees provided for in Article 7332, as set out above.

In reply to your second question, you are advised that Article 7335 provides that after the Commissioners' Court has given to the County Attorney thirty (30) days written notice to file suit for delinquent taxes and he has refused to do so, a contract can be made with another attorney for that purpose. In view of this provision it would follow these requisites must appear before the Commissioners' Court is authorized to employ another attorney. *Cameron et al v. Earnest et al*, 34 S. W.(2d) 685. However, the County Attorney may discuss the matter with the Commissioners' Court and by words and acts, he may waive the necessity of the statutory 30 days notice in writing.

It is a well settled rule of law in this State that as a general thing, a party may waive any formal prerequisite incident to the consummation of an agreement not forbidden by law.

It is said in *Corpus Juris*, Vol. 67 p. 292, "Waiver-the act of waiving or not insisting upon some right, claim or privilege."

It was said in *Sovereign Camp A.O.U.W. v. Nigh*

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223 S. W. 291, "a waiver is the relinquishment of some right by word or contract."

See Slimp v. Wise County, 96 S. W. (2d) 537.

Our opinion is that the County Attorney may by words, or acts waive the 30 days written notice and the Commissioners' Court may then employ another attorney under the provisions of Article 7335-A Revised Civil Statutes. However, it would be a much safer policy to have a written statement from the County Attorney declining the request of the Commissioners' Court to file delinquent tax suits for reasons therein stated and waiving his right to the 30 day period and consenting to the Commissioners' Court entering into a contract with others for the collection of delinquent taxes without waiting the 30 day period and have a record thereof made in the Minutes of the Commissioners' Court.

In reply to your third question.

Article 7343 does not place any duty upon the County Attorney to file delinquent tax suits for cities, towns or villages. We would suggest that each town employ a city attorney and pay him a salary and as such attorney, he could bring tax suits.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

David C. Goodthum
Assistant

COB:BT

APPROVED:

Grasels M. Mann
ATTORNEY GENERAL OF TEXAS *mysh*